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Arizona Corporation Commission

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JAN 31 2002

WILLIAM A. MUNDELL  
CHAIRMAN  
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MARC SPITZER  
COMMISSIONER

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IN THE MATTER OF QWEST CORPORATION'S  
APPLICATION FOR APPROVAL OF LOCAL  
SERVICE FREEZE TARIFF

Docket No. T-01051B-02-0073

MOTION FOR SUSPENSION AND FOR HEARING

Cox Arizona Telcom, L.L.C. ("Cox") moves for an order suspending the filing in the docket and requiring a hearing on Qwest's application for a local service freeze tariff.<sup>1</sup>

In support of this motion, Cox states:

1. On January 28, 2002, Qwest filed its proposed tariff for a local service freeze.

2. The proposed local service freeze presents a controversial concept that can have significant anticompetitive impacts. Moreover, at this time, local service slamming is not a problem in Arizona. When Qwest previously announced that it would provide a local service freeze option to its customers without a tariff, Cox filed an application requesting that the Commission issue an order to show cause to stay implementation of the local service freeze. A copy of that application is attached.

3. Given the apparent lack of need for a local service freeze and the potential anticompetitive impact of such a freeze, Cox requests that the Commission conduct an evidentiary hearing to fully examine the propriety of the local service freeze and to determine if Qwest's proposed tariff should be approved. As revealed by Cox's

<sup>1</sup> Cox has filed for intervention in this docket.


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1 previous application for OSC, the joinders filed by other CLECs and Commission Staff's  
2 position that a tariff is required, a hearing on the application will best serve the public  
3 interest. To allow an adequate hearing process to take place, Cox further requests that the  
4 Commission suspend Qwest's filing in this docket for six months.

5 WHEREFORE Cox requests that the Commission suspend Qwest's filing in this  
6 docket and require a hearing on the application.

7  
8 RESPECTFULLY SUBMITTED January 31, 2002.

9  
10 COX ARIZONA TELCOM, L.L.C.

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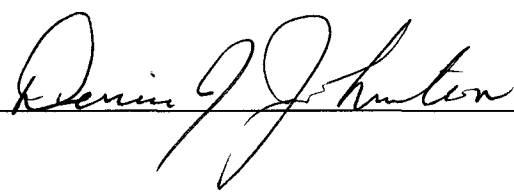
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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN  
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MARC SPITZER  
COMMISSIONER

IN THE MATTER OF COX ARIZONA TELCOM,  
L.L.C.'S APPLICATION TO THE ARIZONA  
CORPORATION COMMISSION TO ISSUE AN  
ORDER TO SHOW CAUSE REGARDING  
IMPLEMENTATION OF QWEST CORPORA-  
TION'S PROPOSED LOCAL CARRIER FREEZE  
SERVICE

Docket No. T-03471A-02-\_\_\_\_\_

APPLICATION

*(Expedited Consideration Requested)*

Cox Arizona Telcom, L.L.C. ("Cox") requests that the Arizona Corporation Commission ("Commission") issue an order to show cause to Qwest Corporation ("Qwest") to stay implementation of Qwest's proposed local carrier freeze service that will be available to Qwest's Arizona customers beginning January 17, 2002 (without a Commission-approved tariff for the proposed service.) This stay will provide the Commission adequate time to address whether such a freeze is in the public interest given the nascent state of competition (particularly residential competition) and the lack of local carrier slamming in Arizona. The Commission could consider these issues of statewide and industry-wide importance in: (i) the existing Slamming and Cramming rulemaking docket (Docket No. RT-00000J-99-0034); (ii) a new docket; or (iii) a tariff docket filed by Qwest for the proposed local carrier freeze.

In support of this application, Cox states:

1. On December 18, 2001, Qwest issued an email announcement stating

1 that, effective January 17, 2002, Qwest will offer a new telecommunications  
2 product/service that would allow Qwest's local service customers to place local carrier  
3 freezes on their accounts. According to the email, if a Qwest customer has "Local Service  
4 Freeze Protection," Qwest will require that customer to contact both Qwest and the  
5 competitive local exchange carrier (CLEC) when the customer wants to switch local  
6 service from Qwest to a CLEC. Presently, the customer only needs to make one phone  
7 call to the CLEC to switch service from Qwest. A copy of the email announcement is  
8 attached at *Exhibit 1*.

9           2. On December 28, 2001, Cox sent a letter to Qwest concerning the  
10 proposed local service freeze. Cox raised several concerns and questions about the freeze  
11 and requested that Qwest either cancel the freeze service or file a proposed tariff with this  
12 Commission. A copy of Cox's letter is attached at *Exhibit 2*.

13           3. On January 7, 2002, Qwest responded to Cox's letter. Qwest contended  
14 the local service freeze responds to "customer needs and state regulatory concerns."  
15 Qwest did not assert that local service slamming was occurring in Arizona, let alone  
16 attempt to quantify any potential problem. A copy of Qwest's response letter is attached at  
17 *Exhibit 3*.

18           4. A local service freeze can have particularly detrimental impacts on  
19 emerging competition. In FCC 98-334, the FCC recognized, while barely stopping short  
20 of prohibiting local carrier freezes, that a local carrier freeze can have a particularly  
21 adverse impact on the development of competition in nascent markets.<sup>1</sup> Relevant excerpts  
22 of the FCC Order are attached as *Exhibit 4*. The FCC acknowledged and discussed a  
23 litany of potential anticompetitive activities and impacts that may result from the  
24  
25

26           <sup>1</sup> FCC 98-334, Paragraphs 127, 135.

1 implementation of a local carrier freeze.<sup>2</sup> Indeed, the increased difficulty for Qwest  
2 customers to switch to a competitor will assist Qwest in retaining its massive market share.  
3 The FCC noted that the added step of calling an ILEC is sometimes all it takes to prevent a  
4 customer from switching carriers and is perhaps the main reason that it concluded that  
5 preferred carrier freezes have the potential to be implemented in an anticompetitive  
6 manner.<sup>3</sup> By forcing customers to call Qwest as well as the CLEC to switch, Qwest will  
7 subject the customer to "winback" scripts, or other efforts to keep that customer with  
8 Qwest. That is particularly troublesome in Arizona where Qwest has a "winback" tariff  
9 already in place. Given Qwest's enormous market dominance in Arizona, the FCC's  
10 concerns about the anticompetitive effects of a local service freeze are amplified.

11 5. In light of these potential adverse effects, the FCC has clearly given  
12 state public utility commissions the ability to adopt moratoria (or other requirements) on  
13 the imposition or solicitation of intrastate preferred carrier freezes.<sup>4</sup> In effect, the FCC  
14 acknowledged that states are in the best position to know if local carrier slamming is a  
15 problem, if a freeze may have unwarranted anticompetitive impacts on the emerging  
16 competitive markets, the potential for inappropriate conduct by the carrier offering the  
17 freeze, etc.<sup>5</sup> However, here in Arizona, Qwest on its own initiative has decided that local  
18 carrier freezes are appropriate despite the lack of any local carrier slamming problems in  
19 the state. Qwest apparently believes that this Commission's consideration of the important  
20 issues surrounding a freeze is not necessary. Qwest has not filed a tariff or provided any  
21 substantial information to this Commission (or other interested or affected parties) about  
22

23  
24 <sup>2</sup> FCC 98-334, Paragraphs 113 to 118.

25 <sup>3</sup> FCC 98-334, Paragraph 115.

26 <sup>4</sup> FCC 98-334, Paragraph 137.

<sup>5</sup> Id.

1 its proposed freeze service. Qwest's letter to Cox is equally unenlightening about just how  
2 this new service will work. Cox believes that it is this Commission, not Qwest, that  
3 should decide whether local carrier freezes are appropriate for Arizona at this time.

4 6. In its response to Cox, Qwest asserts various justifications for its  
5 implementation of the freeze without a tariff. Cox believes that those justifications are not  
6 supported and that, again, this Commission should assess whether a local service freeze is  
7 justified and, if so, how it should be implemented. For example, Qwest asserts:

- 8 a. Because the freeze is not a service (but rather a "practice or method")  
9 and there is no charge, it does not have to be tarified.

10 Qwest's own notice to CLECS (attached as Exhibit 1) calls this a "service."  
11 Regardless, A.R.S. § 40-250(b) addresses "practices" which do not have the effect of  
12 imposing or increasing rates or charges. Moreover, there are many tarified services for  
13 which there is not a charge. A tariff filing provides notice to interested parties and the  
14 ability to intervene to support or oppose such a tariff, as well as to suggest language and  
15 safeguards that should be included, regardless of whether there is a charge.

- 16 b. The freeze is analogous to PIC/LPIC freezes which are not tarified.

17 There are material differences between PIC/LPIC freezes regarding toll service and  
18 a local carrier freeze. First, there has been a nationwide problem with slamming with  
19 respect to long distance (LD) carriers that has justified a need for PIC/LPIC freeze  
20 services. Second, the LD market is a fully developed and competitive market, unlike the  
21 local exchange market. Third, for LD, Qwest as the dominant LEC, primarily facilitates  
22 the reprogramming of its switch to accommodate LD carriers and its customers. Fourth  
23 and most importantly, Qwest has no (current) interest in most LD changes. However, for  
24 local exchange carrier changes, Qwest faces a major conflict of interest because almost  
25 every change of local service provider involves a customer that is leaving Qwest.  
26 Facilitating such switches is not in Qwest's economic or competitive interest. Due to this



1 conflict and the potential for anticompetitive mischief, there needs to be a tariff and/or  
2 rules and guidelines to eliminate such issues.

- 3 c. Qwest's local service freeze responds to customer needs and state  
4 regulatory concerns.

5 Although Qwest mentions a few states that have allowed local service freezes,  
6 Qwest does not identify any "regulatory concerns" or "customer needs" in Arizona.  
7 Indeed, it does not appear that there is a local service slamming problem in Arizona.  
8 Regardless, the Commission should decide what is in the public interest, not Qwest or the  
9 regulatory bodies in other states.

- 10 d. Qwest provided information to Cox regarding the implementation of  
11 the freeze in Washington on March 2, 2001.

12 Even if Qwest did provide such information, Cox does not offer service in  
13 Washington and would have no reason to consider such a notice in terms of its operational  
14 impacts for the State of Arizona.

- 15 e. Qwest will provide wholesale implementation documentation to CLECs  
16 on January 11, 2002.

17 This is less than one week away from the scheduled implementation. That is not  
18 adequate lead time for CLECs to question, challenge such procedures or to implement  
19 their own procedures to deal with the freeze. Such changes will impact several key  
20 operational areas that have responsibilities over processing customer requests to switch  
21 carriers.

22 7. Moreover, Qwest asserted in response to Cox that it will act in  
23 accordance with the FCC rules concerning local service freezes. Although the FCC has  
24 adopted rules regarding the implementation of a local service freeze (*see* 17 CFR  
25 § 64.1190 (attached as part of *Exhibit 4*)), Qwest has not provided adequate information to  
26 determine whether the proposed local service freeze meets the requirements of the rules.

1           The minimal information Qwest has provided raises significant doubt that it  
2 will meet the FCC requirements. For example, the customer "notice" attached to the  
3 Qwest letter is somewhat terse, vague and alarmist – not clear and neutral as required by  
4 47 CFR § 64.1190 (d)(1). It is also disingenuous to CLECs in that the notice itself implies  
5 that there is a problem with local carrier slamming when in fact no such problem exists in  
6 Arizona. This will further undermine the development of a competitive market in Arizona  
7 to the detriment of consumers and CLECs while bolstering Qwest's ability to retain its  
8 market share.

9           Without clear information about how Qwest will implement and conduct the  
10 service – as would be set forth in a tariff or a Commission rule – consumers and  
11 competition are at Qwest's mercy regarding potentially evolving and changing procedures  
12 which affect the ability of the consumer to switch local providers. For example, it is not  
13 known how or when a CLEC will know if a freeze is in place for a particular customer.  
14 Lack of timely knowledge can lead to frustration and dissatisfaction on the part of the  
15 customer who is trying to switch carriers. Moreover, if a customer calls Qwest to remove  
16 the freeze, it is not known how long will it take for the freeze to be lifted. The lifting of  
17 the freeze would be necessary to avoid having a CLEC's local service request to port a  
18 customer rejected by Qwest. The timing of lifting the freeze will determine how and when  
19 a customer will be able to switch to a facilities-based CLEC because it impacts the time of  
20 the port, the local government permitting for drops, the scheduling of truck rolls for  
21 installation, the time the customer would need to be at home to await the technician, etc.  
22 If the interval is not short and there are no guidelines or penalties associated with Qwest's  
23 non-performance, the entire porting process is put in disarray.<sup>6</sup>

24  
25           <sup>6</sup> This aspect of local number portability was not discussed in the Qwest 271 proceeding  
26 regarding Checklist Item 11 nor was it contemplated in the OSS Testing. As such, Cox believes  
that the Commission needs to consider the impact of this new practice in the context of the 271

1 It also is unknown whether Qwest will market other products or services to  
2 customers who contact Qwest (or whom are contacted by Qwest) for the sole purpose of  
3 requesting or removing a freeze. There is no apparent restriction that would prevent  
4 Qwest from attempting to use the freeze removal contact as a customer retention vehicle.  
5 Potentially even more damaging to nascent residential local competition is the potential  
6 that Qwest will use the millions of unrelated consumer contacts it receives to solicit local  
7 service freezes to customers who do not need it and would otherwise not have requested  
8 the service. Qwest's alarmist bill insert material will likely be matched by alarmist scripts  
9 used by its representatives to scare customers into believing their local phone service is at  
10 risk. By using these tactics, over time Qwest will create significant barriers to exit for  
11 customers who may later choose service from a Qwest competitor.

12 8. Cox requests that, given the critical statewide and industry-wide  
13 importance of the issues raised by Qwest's proposed local service freeze and the potential  
14 impact on consumers and competition in Arizona, the Commission issue an order to show  
15 cause that stays the imminent implementation of Qwest's freeze. Qwest claims that its  
16 freeze is for the benefit of consumers, but this Commission is the appropriate judge of  
17 what is in the best interest of Arizona consumers. Qwest will not be harmed if the  
18 implementation is delayed to allow this Commission to thoughtfully and thoroughly  
19 consider the important issues, particularly because there is not a local service slamming  
20 problem in Arizona. By staying implementation, this Commission, consumers and other  
21 interested or affected parties will have the opportunity to address the proposed local  
22 service freeze in the appropriate docket in the appropriate manner.

23 ...

24 ...

25  
26 proceeding even if it means re-opening items that were deemed closed.


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**RELIEF REQUESTED**

WHEREFORE, Cox requests that the Commission issue an order to show cause staying implementation of Qwest's proposed local carrier freeze service to allow the Commission adequate time to address important statewide issues raised by implementation of such a service.

RESPECTFULLY SUBMITTED on January 11, 2002.

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